

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

In re:)	
)	
JEFFERSOUN COUNTY, ALABAMA,)	Case No. 11-05736-
TBB9)	
a political subdivision of)	
the State of Alabama.)	Chapter 9 Proceeding
)	

MOTION FOR RELIEF FROM AUTOMATIC STAY

COMES NOW David Swanson (hereinafter referred to as “Swanson”) and moves this Court for relief from the automatic stay under 11 § 362 and 11 U.S.C. § 922(a). In support of said motion, Swanson states as follows:

PARTIES

1. Swanson is an individual citizen and resident of Jefferson County, Alabama (hereinafter referred to as “Jefferson County” or the “County”) and is above the age of nineteen years.
2. Jefferson County is a political subdivision existing under the state of Alabama.

JURISDICTION

3. This is a core proceeding over which the Bankruptcy Court has jurisdiction pursuant to 28 U.S.C. § 157. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

FACTS, ALLEGATIONS AND BACKGROUND

4. On November 9, 2011, Jefferson County commenced a case under Chapter 9 of Title 11 of the United States Code, also known as “the Bankruptcy Code.”
5. Pursuant to said filing, and pursuant to §§ 362 and 922(a) of the Bankruptcy Code, said filing operates as an automatic stay on all active lawsuits against the County.

6. Swanson has such a suit against the County. Specifically, Swanson appealed, *de novo*, a case from the Jefferson County Probate Court to the Jefferson County Circuit Court. That case at the probate level was *Jefferson County v. Kesha D. Williams, et al.*, Case No. 197877. The case after appeal is *Jefferson County v. Kesha D. Williams, et al.*, CV-08-2191. The County was condemning a strip of property from two parcels of property Swanson owned; said parcels' addresses are 604 Heflin Avenue, East, Birmingham, Alabama, and 608 Heflin Avenue, East, Birmingham, Alabama.

7. For approximately two years, said case sat without any attention in the Jefferson County Circuit Clerk's office. In late 2010, Swanson's current attorney, who was not the attorney who appealed said case, discovered from Swanson that said case had never been adjudicated. Thus, he was able, with the invaluable assistance of the Honorable Houston Brown, to find the case in the Circuit Clerk's office and bring this case before Judge Brown and the Circuit Court.

8. Also late in 2010, Swanson's new counsel was able to determine that the County claimed ownership of part of Swanson's property that was not part of the condemnation. This property to which both the County and Swanson claim ownership consists of part of a road, known as Riderwood Terrace. Swanson claims he owns said road through the purchase of that property and surrounding property as evidenced through at least three separate deeds.

9. Due to the County's claim of ownership, Swanson notified the County of his intent to bring suit and did bring suit against the County for inverse condemnation as soon as possible and also sought a declaratory judgment from the Circuit Court stating that Swanson owns the aforementioned Riderwood Terrace.

10. Specifically, Swanson brought a counterclaim against the County as part of the case he appealed from the Probate Court.

11. Swanson has requested discovery from the County and has filed his counterclaim. The County, due to this stay, has not answered said counterclaim or responded to said discovery.

ARGUMENT ONE: THE AUTOMATIC STAY SHOULD BE LIFTED PURSUANT TO 11 U.S.C. 363(d)(2)(A)&(B).

12. The County has filed bankruptcy under 11 U.S.C. § 901, et seq. Thereunder, the automatic stay of 11 U.S.C. 362 applies as well as the automatic stay pursuant to 11 U.S.C. § 922.

13. 11 U.S.C. § 362 states that on the request of a party in interest and after notice and a hearing, the Court shall grant relief from the automatic stay “with respect to a stay of an act against property under subsection (a) of this section if--(A)the debtor does not have equity in such property; and (B) such property is not necessary to an effective reorganization”

14. In this matter, as stated above, the debtor, Jefferson County, has no equity in this property. The County did not purchase this property. Swanson's argument in his underlying claim of inverse condemnation and his request for a declaratory judgment is, obviously, that Jefferson County has no ownership interest in this property. Jefferson County's assertion of ownership is only that it owns it through prescription. In other words, the County admits that it has no recorded deed or grant of any kind demonstrating it owns the property. Instead, the County makes the conclusory and unsupported statement that it owns the road.

15. Obviously, Jefferson County has no equity in this property, even, *arguendo*, if it owned it via prescription, there is no proof that Jefferson County has any equity therein.

16. The second element of 362(d)(2) is also not met by the County. This property is not necessary in the least for an effective organization under the County's bankruptcy

petition. The County has no need of this property for an effective organization under the County's bankruptcy petition.

ARGUMENT TWO: THE AUTOMATIC STAY SHOULD BE LIFTED DUE TO JUDICIAL EFFECIENCY AND JUDICIAL ECONOMY AND FAIRNESS TO THE PARTIES.

17. The underlying state case has existed in one form or another for over three years. The issues in this case relating to the condemnation and inverse condemnation are well known to the Circuit Court. Those issues are complex and would require any new trier of fact to study the case in depth.

18. Moreover, regarding the inverse condemnation, both parties will have experts testify. Some but not all discovery has taken place. The bankruptcy court in any adversarial proceeding would most likely have to deal with discovery disputes as well as all the other complexities involved in this matter. The time it would require a new trier of fact in an adversary proceeding would be great.

ARGUMENT THREE: THE AUTOMATIC STAY SHOULD BE LIFTED DUE TO SWANSON'S CONSTITUTIONAL RIGHTS PURSUANT TO THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND SECTION 235 OF THE ALABAMA CONSTITUTION.

19. An inverse condemnation claim is defined as “a legal action against a governmental authority to recover the value of property taken by that governmental authority without exercising its power of eminent domain.” *Jefferson County v. Southern National Gas Co.*, 621 So. 2d 1282, 1287 (Ala. 1993).

20. One of Swanson's two claims against Jefferson County is an inverse-condemnation claim. Under Alabama's 1901 Constitution, an inverse condemnation suit is allowed by § 235, which precludes the sovereign, such as Jefferson County, from taking property for public use without just compensation to the owner. *Alabama Constitution* 1901, § 235. Inverse condemnation is one of the few claims that a private

citizen can bring against the state as an exception to sovereign immunity.

Alabama Department of Transportation v. Harbet Int'l., Inc. 990 So. 2d 831, 840 (Ala. 2008).

21. One of the reasons for this exception is that under the United State's Bill of Rights and under the Alabama Constitution, a private citizen's property cannot be taken without due compensation. Specifically, the Fifth Amendment, which is made applicable to the states through the Fourteenth Amendment's doctrine of incorporation, states that private property shall not “be taken for public use, without just compensation.” *United States Constitution*, Fifth Amendment. The Eleventh Circuit has further held the following: “[i]f official authorities act on behalf of the state so as to take private property for public use without just compensation, even if they are acting outside of the scope of their official powers, they have violated the fifth and fourteenth amendments and are subject to an inverse condemnation suit.” *Fountain v. Metropolitan Atlanta Rapid Transit Authority*, 678 F.2d 1038, 1043 (11th Cir. 1982), citing *Katz v. State of Connecticut*, 307 F. Supp. 480, 482 (D. Conn., 1969), *aff'd*, 433 F.2d 878 (2d Cir. 1970).

22. This stay, if continued, would preclude Swanson from being able to litigate this matter and thus would preclude Swanson from the protection provided by the Fifth and Fourteenth Amendments to the United States Constitution and the protection provided by Alabama's Constitution

23. In addition to Swanson's inverse condemnation claim, he has brought a related declaratory judgment claim asking the Court to state who owns the subject property. That claim is intricately intertwined with the inverse condemnation claim and is thus also a matter that implicates Swanson's Federal and state constitutional protections against his property being taken without due compensation and due process.

**ARGUMENT FOUR: THE AUTOMATIC STAY SHOULD BE LIFTED ON
SWANSON'S DECLARATORY JUDGMENT CLAIM**

24. As stated, Swanson brought two claims in his counter complaint against the County, adverse possession and a request for a declaratory judgment. The claim seeking an award for inverse condemnation is a legal claim demanding money damages. However, the declaratory judgment request is not asking for money but an equitable finding that Swanson owns the subject property.

Certainly, the lift on the equitable claim which is not seeking monetary damages from the County but only a declaration by the Circuit Court Judge that the subject property belongs to Swanson should be granted. Although the County would have to defend against that equitable claim; said equitable claim is not seeking any of the County's funds. The County, under this Chapter 9 bankruptcy, is still operating; its legal department is still manned and working. There is no reason under the facts of this particular bankruptcy not to allow this matter in equity to be tried. The legal claim, inverse condemnation, although Swanson argues should be tried, could, in the alternative to the above arguments, continued to be stayed. Feasibly, the Circuit Court's decision regarding the Declaratory Judgment action would put an end to all other litigation.

Respectfully submitted,

/s/henryjwalkerjr
Henry J. Walker, Jr. WAL 178
Attorney for David Swanson

CERTIFICATE OF SERVICE

I hereby certify that I have served the following by filing this motion wit the Bankruptcy Court as informed by the clerk who will then e-file said parties/entities :

Patrick Darby
Bradley Arant Boult Cummings LLP

1819 Fifth Avenue North
Birmingham, AL 35203
Email: pdarby@babbc.com

Jay Bender
Bradley Arant Boult Cummings LLP
1819 Fifth Avenue North
Birmingham, AL 35203
Email: jbender@babbc.com

Kenneth Klee
Klee, Tuchin, Bogdanoff & Stern LLP
1999 Avenue of the Stars, Thirty-Ninth Floor
Los Angeles, CA 90067-5061
Email: kklee@ktbslaw.com

Lee Bogdanoff
Klee, Tuchin, Bogdanoff & Stern LLP
1999 Avenue of the Stars, Thirty-Ninth Floor
Los Angeles, CA 90067-5061
Email: lbogdanoff@ktbslaw.com

J.F. “Foster” Clark, Esq.
Balch & Bingham LLP
1901 6th Avenue North
2600 AmSouth Harbert Plaza
Birmingham, AL 35203-4644
Email: fclark@balch.com

J. Hobson Presley, Jr.
Presley Burton & Collier, LLC
2801 Highway 280 South, Suite 700
Birmingham, AL 35223-2483
Email: hpresley@presleyllc.com

Jeffrey M. Sewell, County Attorney
Room 280 Jefferson County Courthouse
716 North Richard Arrington Jr. Blvd.
Birmingham, AL 35203
Email: swewllj@jccal.org

Counsel for any official committee appointed pursuant to Section 1102 of the Bankruptcy Code (as made applicable by Section 901 of the Bankruptcy Code) or, absent and prior to the appointment of any such committee, to each of the creditors included on the list of creditors holding the twenty largest unsecured claims as filed by the County;

Office of the Bankruptcy Administrator
c/o J. Thomas Corbett, Esq.
United States Bankruptcy Court
Robert S. Vance Federal Building
1800 5th Ave. North
Birmingham, AL 35203
Email: Thomas_Corbett@alnb.uscourts.gov

Cooper Shattuck, Esq.
Legal Advisor
Office of the Governor
State of Alabama
Office of the Governor
State Capital, Room N-104
600 Dexter Avenue
Montgomery, AL 36130

David Perry, Esq
Finance Director
Office of the Governor
State of Alabama
Office of the Governor
State Capital, Room N-104
600 Dexter Avenue
Montgomery, AL 36130

Luther Strange, Esq.
Attorney General
State of Alabama
501 Washington Avenue
Montgomery, AL 36130

Alabama Dept. of Environmental Management
Tom Johnston, Esq.
General Counsel
P.O. Box 301463
Montgomery, AL 36130-1463
Phone: (334) 271-7855
Fax: (334) 394-4332

Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N. W.
Washington, DC 20460

Environmental Protection Agency
Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 30303-314

SEC Headquarters
100 F Street, NE
Washington, DC 20549

Internal Revenue Service
Centralized Insolvency Operation
Post Office Box 21126
Philadelphia, PA 19114-0326

The Bank of New York Mellon, as Indenture Trustee
c/o Gerald F. Mace, Esq.
Michael R. Paslay, Esq.
Waller Lansden Dortch & Davis, LLP
511 Union Street, Suite 2700
Nashville, TN 37219
gerald.mace@wallerlaw.com
Mike.Palsay@wallerlaw.com

The Bank of New York Mellon, as Indenture Trustee
c/o Larry Childs, Esq.
Waller Lansden Dortch & Davis, LLP
Regions Harbert Plaza
1901 Sixth Avenue North, Suite 1400
Birmingham, AL 35203
Email: larry.childs@wallerlaw.com

U.S. Bank, National Association, as Paying Agent
2204 Lakeshore Drive Suite 302
Mail Code: EX-AL-WWPH
Homewood, AL 35209
Email: felicia.cannon@usbank.com

Bank of America, N.A.
c/o David L. Eades
Moore & Van Allen, PLLC
100 North Tyron Street, Suite 4700
Charlotte, NC 28202-4003
Email: davideades@mvalaw.com

The Bank of New York Mellon
c/o Thomas C. Mitchell

Orrick, Herrington & Sutcliffe LLP
The Orrick Building
405 Howard Street
San Francisco, CA 94105-2669
Email: tcMitchell@orrick.com

The Bank of Nova Scotia and Lloyds TSB Bank PLC
c/o James E. Spitto
Chapman & Cutler LLP
111 West Monroe Street
Chicago, IL 60603-4080
Email: spiotto@chapman.com

JPMorgan Chase Bank
Steve M. Furman, Esq
Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, NY 10017
Email: sfuhrman@stblaw.com

Lloyds TSB Bank PLC
c/o James E. Spitto
Chapman & Cutler LLP
111 West Monroe Street
Chicago, IL 60603-4080
Email: spiotto@chapman.com

Regions Bank
c/o Jayna Partain Lamar
Maynard Cooper & Gale P.C.
AmSouth/Harbert Plaza, Suite 2400
1901 6th Avenue North
Birmingham, AL 35203-2618
Email: jlamar@maynardcooper.com

Societe Generale
c/o Mark J. Fiekers
Ashurst LLP
1725 I Street NW, Suite 300
Washington, DC 20006
Email: mark.fiekers@ashurst.com

Societe Generale
c/o Joyce T. Gorman
Ashurst LLP
1725 I Street NW, Suite 300

Washington, DC 20006
Email: joyce.gorham@ashurst.com

Societe Generale
c/o Jack Rose
Ashurst
7 Times Square
New York, NY 10036
Email: Jack.rose@ashurst.com

State Street Bank and Trust Company
c/o William W. Kannel
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
One Financial Center
Boston, MA 02111
Email: wkannel@mintz.com

Bayern LB
c/o Joseph Campagna
Vice President
560 Lexington Avenue
New York, New York 1022
Email: jcampagna@bayernlbny.com

Bayern LB
c/o Edward A. Smith
Venable
Rockefeller Center
1270 Avenue of the Americas
Twenty-fifth Floor
New York, NY 10020
Email: EASmith@Venable.com

Bayerische Landesbank
560 Lexington Avenue
18th Floor
New York, NY 10022

JPMorgan Chase Bank
Attn: Michael Mak
60 Wall Street
New York, NY 10260

JPMorgan Chase Bank, as Liquidity Agent
c/o Steve Fuhrman
Simpson Thacher & Bartlett LLP

425 Lexington Avenue
New York, NY 10017
Email: sfuhrman@stblaw.com

Assured Guaranty Municipal Corp.
c/o Winston & Strawn LLP
Lawrence A. Larose, Esq.
Samuel S. Kohn, Esq.
Sarah L. Trum, Esq.
200 Park Avenue
New York, New York, 10166-4163
llarose@winston.com
skohn@winston.com
strum@winston.com

Assured Guaranty Municipal Corp.
c/o Mark P. Williams
Norman, Wood, Kendrick & Turner
Financial Center – Suite 1600
505 20th Street North
Birmingham, Alabama 35203
Email: mpwilliams@nwkt.com

Financial Guaranty Insurance Company
c/o H. Slayton “Slate” Dabney, Jr.
King & Spalding
1185 Avenue of the Americas
New York, NY 10036-4003
Email: sdabney@kslaw.com

Financial Guaranty Insurance Company
c/o Richard Patrick Carmody
Adams and Reese, LLP
21003rd Ave N Ste 1100
Birmingham, AL 35203-3385
Email: richard.carmody@arlaw.com

Syncora Guarantee, Inc.
c/o Quinn Emanuel Urquhart & Sullivan, LLP
Jonathan E. Pickhardt
Jake M. Shields
51 Madison Avenue, 22nd Floor
New York, NY 10010
jonpickhardt@quinnemanuel.com
jakeshields@quinnemanuel.com

National Public Finance Guarantee
c/o Adam Berganzi
Chief Risk Officer
113 King Street
Armonk, NY 10504
Email: adam.berganzi@nationalpfg.com

John S. Young, Jr. LLC as Receiver
c/o Baker Donelson, Bearman, Caldwell & Berkowitz, P.C.
Timothy M. Lupinacci, Esq.
W. Patton Hahn, Esq.
1600 Wachovia Tower
Birmingham, AL 35203
Email: tlupinacci@bakerdonelson.com
Email: phahn@bakerdonelson.com

Jefferson County Personnel Board
c/o Lee R. Benton
Benton & Centeno, LLP
2019 3rd Avenue North
Birmingham, AL 35203
Email: lbenton@bcattys.com

Bayerische Landesbank (f.k.a. Bayerische Landesbank Girozentrale)
560 Lexington Avenue
18th Floor
New York, NY 10022
Attn: Francis X. Doyle
Second Vice President
Phone: (212) 230-9075

JP Morgan Chase Bank
60 Wall Street
New York, NY 102060
Attn: William A. Austin
Phone: (212) 483-2323
The Depository Trust Company, On Behalf of the holders
of the Jefferson County, Alabama, General Obligation Capital
Improvement Warrants, Series 2004-A
55 Water Street
New York, NY 10041
Phone: (212) 855-1200

National Public Finance Guarantee Corp. (f/k/a MBIA Insurance Corp.),
as Insurer of the General Obligation Capital Improvement
Warrants, Series 2004-A

113 King Street
Armonk, NY 10504
Attn: Daniel McManus
General Counsel
Phone: (914) 765-3533

U.S. Bank National Association (as successor to
SouthTrust Bank), as paying agent
2204 Lakeshore Drive
Suite 302
Mail Code: EX-AL-WWPH
Homewood, AL 352096
Attn: Felicia Cannon
Phone: (205) 802-5502

The Depository Trust Corporation
on behalf of the holders of the Jefferson County, Alabama,
General Obligation Capital Improvement and Refunding Warrants,
Series 2003-A
55 Water Street
New York, NY 10041
Phone: (212) 855-1200

National Public Finance Guarantee Corp. (f/k/a MBIA
Insurance Company), as Insurer of the General
Obligation Capital Improvement and
Refunding Warrants, Series 2003-A
113 King Street
Armonk, NY 10504
Attn: Daniel McManus,
General Counsel
Phone: (914) 765-3533

The Bank of New York Mellon Trust Company, N.A.
(f/k/a The Bank of New York Trust Company of Florida, N.A.),
as registrar, transfer agent and paying agent
505 N. 20th Street
Suite 950
Birmingham, AL 35203
Attn: Charles S. Northen, IV
Phone: (205) 214-0216

Shoe Station, Inc.
c/o Michael T. Cronin, Esq.
Johnson Pope Bokor Ruppel & Burns, LLP
911 Chestnut Street

Clearwater, FL 33576
Phone: (727) 461-1818

Morris & Dickson Co. LLC
P.O. Box 51367
Shreveport, LA 71135-1367
Phone: (800) 388-3833

City of Hoover
P.O. Box 360628
Hoover, AL 35236-0628
Phone: (205) 444-7506

Beckman Coulter
Dept. CH10164
Palatine, IL 60055-0164
Phone: (800) 526-3821

Teklinks Inc.
201 Summit Parkway
Homewood, AL 35209
Phone: (205) 314-6600

AMT Medical Staffing, Inc.
P.O. Box 2105
Birmingham, AL 35202
Phone: (205) 321-6881

John Plott Company, Inc.
2804 Rice Mine Road NE
Tuscaloosa, AL 35406
Phone: (205) 345-5678

AMSOL
P.O. Box 6633
High Point, NC 27262
Phone: (336) 884-1830

Brice Building Co., LLC
201 Sunbelt Parkway
Birmingham, AL 35211
Phone: (205) 930-9911
Augmentation, Inc.
3415 Independence Drive
Suite 101
Birmingham, AL 35209-8315

Phone: (205) 870-1675

AMCAD
15867 North Mountain Road
Broadway, VA 22815
Phone: (540) 896-9952

Universal Hospital Services
P.O. Box 86
Minneapolis, MN 55846-0940
Phone: (205) 981-2710

University of Alabama Health Services Foundation, P.C.
P.O. Box 55309
Birmingham, AL 35255-5309
Phone: (205) 934-3067

Laboratory Corporation of America
P.O. Box 12140
Burlington, NC 27216-2140
Phone: (800) 343-4407

UAB Health System
(University Hospital & UAB Hospital Business Office)
619 9th Street South
Jefferson Tower, Room J306
Birmingham, AL 35249-6805
Phone: (205) 934-9957

Medical Data Systems Inc.
2001 9th Avenue
Suite 312
Vero Beach, FL 32963
Phone: (772) 770-2255

Recipients of Notice of Electronic Filing:

J Thomas Corbett	thomas_corbett@alnba.uscourts.gov
Patrick Darby	pdarby@babarc.com
Adrienne K. Walker	awalker@mintz.com
Bill D Bensinger	bbensinger@bakerdonelson.com
Charles L. Denaburg	cdenaburg@najjar.com
Christopher L. Hawkins	cawkins@babarc.com
Clark R Hammond	crh@jbpp.com
Clifton Charles Mosteller	cmosteller@burr.com
Daniel J. Ferretti	dferretti@bakerdonelson.com

David E. Lemke	david.lemke@wallerlaw.com
J Leland Murphree	lmurphree@maynardcooper.com
James Blake Bailey	jbailey@babbc.com
Jay R. Bender	jbender@babbc.com
Jayna Partain Lamar	jlamar@maynardcooper.com
Jennifer Harris Henderson	jhenderson@babbc.com
Joe A. Joseph	jjoseph@burr.com
Larry Brittain Childs	larry.childs@wallerlaw.com
Mark P. Williams	mpwilliams@nwkt.com
Max A. Moseley	mmoseley@bakerdonelson.com
Richard Patrick Carmody	richard.carmody@arlaw.com
Ryan K Cochran	ryan.cochran@wallerlaw.com
Timothy M Lupinacci	tlupinacci@bakerdonelson.com
W Patton Hahn	phahn@bakersdonelson.com
William W Kannel	wkannel@mintz.com
Wilson F. Green	wgreen@fleenorgreen.com

Recipients submitted to the BNC(Bankruptcy Noticing Center):

Jefferson County Alabama
Room 280 Courthouse
716 North Richard Arrington Jr.
Birmingham, AL 35203

Regions Bank
c/o Jayna Lamar
1901 6th Avenue North
Suite 2400
Birmingham, AL 35203

Bank of New York Mellon, as Indenture Trustee
c/o Waller Lansden Dortch & Davis LLP
Attn: Ryan Cochran
511 Union Street
Suite 2700
Nashville, TN 37219

Assured Guaranty Municipal Corp.
31 West 52nd Street
New York, NY 10019

Kenneth Klee
1999 Avenue of the Stars
39th Floor
Los Angeles, CA 90067-6049

Ambac Assurance Corporation
c/o Najjar Denaburg PC
2125 Morris Avenue
Birmingham, AL 35203

J.P. Morgan Securities, Inc.
c/o Clark R. Hammond
569 Brookwood Village
Suite 901
Birmingham, AL 35209

J.P. Morgan Chase Bank, N.A.
c/o Clark R. Hammond
569 Brookwood Village
Suite 901
Birmingham, AL 35209

/s/henryjwalkerjr
Henry J. Walker, Jr. WAL 178
Attorney for David Swanson